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*Attorneys for Plaintiff National Steel Car Limited*

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

NATIONAL STEEL CAR LIMITED, a  
Canadian corporation,

Plaintiff,

v.

GREENBRIER-CONCARRIL LLC, a  
Delaware limited liability company; and  
GREENBRIER LEASING COMPANY,  
LLC, a Delaware limited liability company,

Defendants.

Case No. 3:20-cv-01275-YY

PLAINTIFF NATIONAL STEEL CAR  
LIMITED'S RESPONSE TO DEFENDANTS'  
GREENBRIER LEASING COMPANY, LLC'S  
AND GREENBRIER-CONCARRIL LLC'S  
MOTION TO AMEND THE SCHEDULING  
ORDER

Plaintiff National Steel Car Limited (“NSC”) opposes Defendants’ Greenbrier Leasing Company, LLC’s (“Greenbrier Leasing’s”) and Greenbrier-Concarril LLC’s (“Greenbrier-Concarril’s”) (collectively “Greenbrier’s”) request for an unnecessarily prolonged extension of the case schedule. For many months, the Parties have agreed to extend the deadlines to allow for approximately one month or less between the Court’s claim construction order and the due date for final infringement and invalidity contentions. The current schedule provides for 21 days between the Court’s updated claim construction order, dated November 19, 2021 (“updated Order”) (ECF 151), and service of contentions by December 10, 2021. NSC offered and remains willing to extend the contentions deadline by more than a week, but Greenbrier refused. The parties have had many months to focus on the preparation of their final contentions, with perhaps minor adjustments necessary in light of the Court’s updated Order. In fact, Greenbrier’s preliminary invalidity contentions include over 1,000 pages with claim charts of 17 prior art references that purportedly anticipate or renders obvious (either alone or in combination) one or more asserted claims of the Asserted Patents (U.S. Patent Nos. 7,434,519 and 7,878,125). Given that Greenbrier had ample time to finalize their invalidity contentions (over four months from the Court’s claim construction order, dated July 9, 2021) (ECF 127), the necessity of an additional eight weeks rather than NSC’s compromise of over four weeks to serve final contentions, is unavailing when the updated Order clarified one disputed term.

Further, Greenbrier’s plan to serve excessive contentions in the “same magnitude” as their preliminary contentions is a reason to deny, rather than grant, their current motion. No reasonable case should involve such voluminous contentions, especially this late in a case that has been pending for nearly two years, and in light of the many months during which Greenbrier had little else to do in this case other than work on their contentions. Providing another eight weeks for Greenbrier to pile-on and further obfuscate their genuine contentions will significantly prejudice NSC and only serve to delay resolution of this case.

Finalizing the contentions prior to the holidays will also allow the parties to begin depositions and finalize written discovery promptly after the holidays. It is time for this case to move forward.

Accordingly, NSC submits that its proposed compromise is reasonable and should be adopted:

Event	Current Deadline	Proposed New Deadline
Deadline to serve Final Infringement and Invalidity Contentions	December 10, 2021	December 22, 2021
Fact Discovery Closes	March 18, 2022	No change
Opening Expert Reports	April 22, 2022	No change
Rebuttal Expert Reports	May 27, 2022	No change
Expert Discovery	June 24, 2022	No change
Meet and Confer to Narrow Claims and Prior Art	July 1, 2022	No change
File Report Regarding Results of Meet and Confer	July 8, 2022	No change
Dispositive Motions and Daubert	July 22, 2022	No change

The Court should also maintain the January 7, 2022, deadline for NSC to respond to Greenbrier's interrogatory numbers 3 & 4 and for Greenbrier to respond to NSC interrogatory numbers 4, 7, 8 & 9. In the event the Court grants Greenbrier's motion to amend the scheduling order, NSC requests to extend the deadline from December 20, 2021, to January 26, 2022, to serve supplemental responses to Greenbrier's Interrogatory No. 20 with updated claim charts relating to NSC's commercial embodiments (in similar detail as NSC's infringement contentions), which will be over a week from serving contentions under Greenbrier's proposed schedule.

Furthermore, NSC requests that the Court also limit Greenbrier's invalidity contentions to no more than 15 prior art references. Such a limit is reasonable at this stage of the case, and

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even more reasonable in light of any extension. The additional time should be spent narrowing, not expanding, the scope of Greenbrier's invalidity contentions.

Dated: December 3, 2021

Respectfully submitted,

MILLER NASH LLP

s/ C. Marie Eckert

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**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing Plaintiff National Steel Car Limited's  
Response to Defendants' Greenbrier Leasing Company, LLC's and Greenbrier-Concarril LLC's  
Motion to Amend the Scheduling Order on:

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by the following indicated methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **Email.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were emailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☒ **Email (courtesy copy).**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**
- ☐ **Overnight courier, delivery prepaid.**

DATED: December 3, 2021.

/s/ C. Marie Eckert

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*Of Attorneys for Plaintiff National Steel  
Car Limited*